IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

WP(C).No. 24176 of 2004(C)

PETITIONER:

HARILAL.B., MILL WRIGHT INSTRUCTOR,
GOVT.I.T.I., CHACKAI,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.E.UNNIKRISHNAN

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY
ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF LABOUR AND REHABILITATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR, DIRECTORATE OF
EMPLOYMENT AND TRAINING, THYCAUD,
THIRUVANANTHAPURAM.

3. THE PRINCIPAL,
GOVERNMENT I.T.I., CHACKAI,
THIRUVANANTHAPURAM.

4. THE DEPUTY DIRECTOR GENERAL,
N.C.C. (KERALA & LAKSHADWEEP),
N.C.C. DIRECTORATE, COTTON HILL,
THIRUVANANTHAPURAM.

5. M.S.GANESAPILLAI,
ASSISTANT HOSTEL SUPERINTENDENT,
GOVT.I.T.I. CHACKAI,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA
SRI.NAIR AJAY KRISHNAN
SRI.SABU SREEDHARAN
SRI.SAIJO HASSAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.24176/2004

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE NOTIFICATION DATED 10.07.2003 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE PROCEEDINGS VIDE 0162/DEL/GD NCC HQ/MS (D) DATED 09.11.2000

EXHIBIT P3: TRUE COPY OF THE APPLICATION IN FORM III THROUGH PROPER CHANNEL DATED 06.08.2003.

EXHIBIT P4: TRUE COPY OF THE CLARIFICATION NO.0162/POLICY/DGNCC/MS(D) DATED 15.12.1997 - APPOINTMENT OF ANOS IN SENIOR/JUNIOR DIVISION/WING.

EXHIBIT P5: TRUE COPY OF THE NEWSPAPER REPORT APPEARED IN 'DESHABHIMANI' DAILYD ATED 24.11.2003.

EXHIBIT P6: TRUE OCPY OF THE PRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 16.12.2003.

EXHIBIT P7: TRUE COPY OF THE PROCEEDINGS OF THE ASSEMBLY DATED 22.07.2004.

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMAN, J.

W.P.© NO. 24176/2004

DATED THIS, THE 16TH DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner is a Mill Wright Instructor who joined service as Junioor Instructor in the Department of Labour and Rehabilitation in 1996 ans was working in the Machine Maintenance Cell, Cccchackai. He is a B. Tech Grtaduate and is also a holder of B Certificate in National Cadet Crops (NCC). He had also undergone training in NCC for five years. As per Ext.P1 notification, applications were invited for filling up the vacancies of Associate N.C.C. Officers (ANOS) in various institutions as given in the list appended to the said notification. As per the eligibility condition, the candidates should not be below 21 years or above 42 years. Ext.P1 is dated 10th July, 2003. Though according to the petitioner, he was fully qualified and submitted his application to the third respondent, the same was not duly forwarded to the 4th respondent for consideration. On the other hand, the 5th respondent, who is not a member of teaching staff, was appointed as care taker through back door, and as a result of this, an unqualified person was

appointed without considering his application. It is in the above circumstances and as averred in the writ petition, that he has approached this court.

2. Neither respondents 2, 3 or 4 nor the 5th respondent has filed any counter affidavit controverting the averments made in the writ petition. The only counter affidavit filed is by the first respondent, who, however, is not the authority to consider the application of the petitioner, if it was duly forwarded to the concerned authorities, since the only person who is to consider the application is the 4th respondent. Therefore, whether the petitioner was qualified for the post pursuant to Ext.P1 or not has to be decided by the 4th respondent. But in this case, admittedly, there is no answer as to why the application submitted by the petitioner to the 3rd respondent was not forwarded to the 4th respondent. The counter affidavit seems justifying the appointment of the 5th respondent on various grounds. The 5th respondent may or may not be better or more suitable than the petitioner. But that is a matter for assessment by the 4th respondent. Even though, in the counter affidavit, there is an averment that the petitioner has crossed the age of 42 and therefore may not be eligible to be considered, petitioner rightly points out that as per Ext.P2 dated 13.11.2000 relaxation

in the upper age limit is permissible up to 45 years at the sole discretion of the 4th respondent. Therefore, even if the petitioner has crossed the age of 42 years, he has not completed 45 years on the date of application, it is for the 4th respondent to consider the question as to whether any relaxation should be granted in his favour and whether petitioner deserves any such relaxation. Therefore, the facts as stated would clearly show that there is non consideration of the application made by the petitioner.

3. In the circumstances, the following directions are issued:

The third respondent shall forward the application already submitted by the petitioner to the 4th respondent, within a period of one week from the date of receipt of a copy of this judgment. On receipt of the same, the 4th respondent shall consider the rival claims of the 5th respondent and the petitioner and take a decision, within a period of two months thereafter. It is open to the 4th respondent to consider as to whether any concession shall be given to the petitioner regarding age besides considering other merits for being posted. Since the 5th respondent is already posted and continuing for all these years, the same need not be disturbed until a final decision is taken by the 4th respondent. Subject to such decision, consequential orders shall be passed by the 4th respondent.

Petitioner shall produce a copy of this judgment before the concerned authorities for information and compliance.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-